

**IN THE UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA CIRCUIT**

AMERICAN PETROLEUM INSTITUTE,

Petitioner,

v.

DEPARTMENT OF THE INTERIOR
and BUREAU OF OCEAN ENERGY
MANAGEMENT,

Respondents.

Case No. 24-1023

PETITION FOR REVIEW

The American Petroleum Institute petitions this Court to review the Department of the Interior and Bureau of Ocean Energy Management's Record of Decision and Approval of the 2024-2029 National Outer Continental Shelf Oil and Gas Leasing Program (Dec. 14, 2023). 43 U.S.C. § 1349(c)(1); Fed. R. App. P. 15(a). The Record of Decision is attached as Exhibit A.

The Court should grant the petition because the Record of Decision and Approval is arbitrary, capricious, and not in accordance with law.

Respectfully submitted,

/s/ Sean Marotta

Sean Marotta

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Counsel for American Petroleum Institute

February 12, 2024

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CORPORATE DISCLOSURE STATEMENT

The American Petroleum Institute represents all segments of America's natural gas and oil industry, and its nearly 600 members produce, process and distribute the majority of the nation's energy.

API is a not-for-profit corporation, has no parent corporation, and no corporation holds any stock in API.

Respectfully submitted,

/s/ Sean Marotta

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Counsel for American Petroleum Institute

February 12, 2024

Exhibit A



United States Department of the Interior

BUREAU OF OCEAN ENERGY MANAGEMENT
WASHINGTON, DC 20240-0001

Memorandum

To: Secretary

Through: Steven H. Feldgus
Deputy Assistant Secretary
Land and Minerals Management

Steven H.
Feldgus

Digitally signed by Steven
H. Feldgus
Date: 2023.12.01
12:50:34 -05'00'

From: Elizabeth Klein
Director

ELIZABETH
KLEIN

Digitally signed by
ELIZABETH KLEIN
Date: 2023.12.01
10:37:38 -05'00'

Subject: Record of Decision and Approval of the 2024-2029 National Outer Continental Shelf Oil and Gas Leasing Program

The Bureau of Ocean Energy Management (BOEM) requests your approval of the schedule of proposed lease sales described in the 2024-2029 National Outer Continental Shelf (OCS) Oil and Gas Leasing Proposed Final Program (PFP) (attachment 1) published on September 29, 2023, and hereby incorporated by reference.

Under section 18 of the OCS Lands Act, the Secretary of the Interior is responsible for preparing and maintaining, consistent with specified principles, a schedule of proposed OCS oil and gas lease sales determined to "best meet national energy needs for the five-year period following its approval or reapproval."

On September 29, 2023, the Secretary submitted the PFP to the President and Congress, as required by section 18(d)(2) of the OCS Lands Act. The National OCS Oil and Gas Leasing Program (National OCS Program) for 2024-2029 (2024-2029 Program) may be approved 60 days after that date. Contemporaneous with the PFP submission, BOEM also published a final programmatic environmental impact statement (Final Programmatic EIS) (attachment 2), pursuant to the National Environmental Policy Act (NEPA). The Final Programmatic EIS analyzes four alternatives for the 2024-2029 Program and the reasonably foreseeable environmental consequences of each alternative.

Alternative A, "No Action Alternative," analyzes no new lease sales, whereas Alternative D, "25 Planning Areas," analyzes sales in 25 of the 26 OCS planning areas. Alternative B, "6 Planning Areas," analyzes sales in Alaska (Chukchi Sea, Beaufort Sea, Cook Inlet) and the 3 Gulf of Mexico (GOM) planning areas. Alternative C, "9 Planning Areas," includes the Alternative B planning areas and analyzes additional sales in the Mid-Atlantic, South Atlantic, and Southern California Planning Areas. The PFP proposes three potential lease sales in the GOM Program Area, which includes the Western GOM Planning Area and portions of the Central and Eastern

GOM Planning Areas not currently withdrawn from mineral leasing. The environmental impacts that could result from the PFP's proposed lease sales are analyzed as Alternative B(a), which analyzes only the GOM Program Area.

As discussed in section 4.2 of the Programmatic EIS, BOEM identified Alternative A, "No Action Alternative," as the environmentally preferable alternative. However, Alternative A does not meet the purpose and need for the action as stated in the Final Programmatic EIS, because, on the record before us, it does not best meet national energy needs.

The selection of the 2024-2029 Program, as described in the PFP and the Final Programmatic EIS, is based on a balancing of national policy considerations, as outlined in Chapter 2 of the PFP and as explained throughout the PFP. These considerations are enumerated in section 18(a) of the OCS Lands Act.

BOEM also considered the application of programmatic mitigation measures in the Final Programmatic EIS. The Secretary decided, at the PFP stage, to employ programmatic mitigation to reduce impacts on topographic features and pinnacle trends. This programmatic mitigation will require all leases issued under the 2024-2029 Program in areas with sensitive seafloor features to employ mitigation measures to protect the features. BOEM and its predecessor agencies have required avoidance of sensitive bottom habitats in the GOM for decades through lease stipulations. These stipulations are designed to avoid or minimize harm from seafloor-disturbing activities to these sensitive and unique features. Applying these stipulations at the National OCS Program development stage is consistent with current practice and continues the effective protection of these biologically sensitive areas, should areas including these sensitive bottom habitats be offered in the three potential lease sales scheduled in the 2024-2029 Program.

Appendix F of the Final Programmatic EIS discusses additional mitigation measures that BOEM has historically applied at the lease sale stage to avoid or minimize environmental harm. Incorporating all the Appendix F mitigation measures at the National OCS Program stage of the planning process is impracticable because most measures are developed for and individually applied to specific circumstances associated with each lease sale offering and subsequent site-specific plan approvals. However, while most of these site- or resource-specific mitigation measures are not adopted at the 2024-2029 Program stage, they should be considered at later decision points, and if applied, monitored for compliance, as appropriate, during subsequent stages. Additional specific mitigation measures may also be developed and applied, as appropriate.

Lastly, the Final Programmatic EIS discusses BOEM's efforts to improve its environmental justice considerations through the development of best practices and methodologies. BOEM is committed to integrating these best practices and methodologies as they become available into its NEPA assessments and decision-making processes.

A summary of public comments on the Final Programmatic EIS is provided in the addendum below.


At the conclusion of the 60-day period that commenced on September 29, 2023, BOEM recommends that you approve the 2024-2029 Program as set forth in the PFP. BOEM also recommends that the 2024-2029 Program become effective starting July 1, 2024, and continue through June 30, 2029.

Secretarial Decision

Approval of this memorandum constitutes the decision to proceed as described in the PFP. The PFP covers the 5-year period starting on July 1, 2024, and continuing through June 30, 2029, and schedules three potential oil and gas lease sales in the GOM Program Area. The three GOM sales are scheduled to occur over the 5 years of the 2024-2029 Program, with one sale each in 2025, 2027, and 2029. The Secretary retains discretion at the lease sale stage to determine whether, when, and under what terms a lease sale should be held and the precise acreage to be offered.

Approved:  _____

Disapproved: _____


Secretary of the Interior

Date: December 14, 2023

Attachments

Addendum: Discussion of Public Comments on the Final Programmatic EIS

BOEM received a comment letter from the U.S. Environmental Protection Agency (EPA) after publication of the Final Programmatic EIS. EPA's comment letter provided recommendations related to greenhouse gas emissions and environmental justice analyses. BOEM will examine and consider EPA's recommendations in future analyses.

CERTIFICATE OF SERVICE

I hereby certify that on February 12, 2024, I caused a copy of the foregoing
to be delivered by first-class mail, postage prepaid to the following:

Deb Haaland
Secretary of the Interior
U.S. Department of the Interior
1849 C Street, N.W.
Washington, D.C. 20240

Merrick Garland
Attorney General
U.S. Department of Justice
950 Pennsylvania Avenue, N.W.
Washington, D.C. 20530

/s/ Sean Marotta
Sean Marotta